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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
NPCR, Inc. d/b/a Nextel Partners ) CC Docket No. 96-45  
 )  
Petition for Waiver of Sections 54.313 )  
and 54.314 of the Commission's Rules )

To: The Commission

**PETITION FOR WAIVER – EXPEDITED ACTION REQUESTED**

Pursuant to Sections 1.3 and 1.925 of the Commission's Rules,<sup>1</sup> NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners") hereby requests waivers of Sections 54.313 and 54.314 of the Commission's Rules, which require state certification of Universal Service Fund ("USF") High Cost Program support for non-rural and rural carriers, respectively.<sup>2</sup> Nextel Partners was designated an Eligible Telecommunications Carrier ("ETC") in the State of Kentucky on December 16, 2004, and seeks waivers of the foregoing rules in order to receive High Cost Program funding commencing on the date of ETC designation.

Specifically, Nextel Partners seeks waivers of the annual state certification requirements set forth in Sections 54.313 and 54.314 of the Commission's Rules that would otherwise require that the State of Kentucky file its annual certification of use of high cost funds for rural and non-rural study areas by July 1, 2004 (almost six months before Nextel Partners was designated an ETC) to allow for funding to commence in the

<sup>1</sup> 47 C.F.R. §§ 1.3 and 1.925.

<sup>2</sup> See 47 C.F.R. §§ 54.313 and 54.314.

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Fourth Quarter of 2004. Waivers of the referenced rules will enable Nextel Partners to begin to receive USF High Cost Program subsidies commencing on the date of Nextel Partners' designation, December 16, 2004, in the rural and non-rural areas in Kentucky for which Nextel Partners has obtained ETC status.<sup>3</sup>

In support of this Petition for Waiver, the following is respectfully shown:

## **I. BACKGROUND**

Nextel Partners is a commercial mobile radio service ("CMRS") provider in the State of Kentucky and operates an advanced digital wireless network providing mobile telecommunications services under the "Nextel" brand name. On April 23, 2003, Nextel Partners filed a petition with the State of Kentucky's Public Service Commission ("Kentucky PSC") seeking designation as an ETC in certain rural telephone company study areas and non-rural ILEC wire centers (hereafter, the "Designated Areas").<sup>4</sup> On December 16, 2004, the Kentucky PSC issued an order designating Nextel Partners an ETC in the Designated Areas.

## **II. THE NEED FOR THE WAIVERS**

Under Sections 54.313 and 54.314 of the Commission's Rules, in order for an ETC to receive USF support for rural and non-rural study areas in a State that has chosen to exercise jurisdiction over ETC designations, the State must file annual certifications with the Commission and with the Universal Service Administrative Company ("USAC") stating that all federal high-cost support will be used only for the provision, maintenance,

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<sup>3</sup> A list of the areas in Kentucky for which Nextel Partners has been designated an ETC is included in Exhibit A hereto.

<sup>4</sup> See Exhibit A hereto.

and upgrading of facilities and service for which the support is intended.<sup>5</sup> The annual certifications under Sections 54.313 and 54.314 of the Commission's Rules, due by October 1, are required to make USF High Cost Program funding available for the First through Fourth Quarters of the *succeeding* calendar year.

On December 16, 2004, the Kentucky PSC submitted a certification in accordance with 47 C.F.R. §§ 54.313 and 54.314 to both USAC and the Commission regarding Nextel Partners' use of USF funds.<sup>6</sup> As a result, Nextel Partners is eligible to begin receiving USF support during the Second Quarter of 2005. Currently, there is no mechanism, however, for a newly-designated ETC such as Nextel Partners to receive support for the approximate three and one-half month period from December 16, 2004, the date Nextel Partners was designated an ETC in Kentucky, to the beginning of the Second Quarter of 2005 (commencing April 1, 2005).<sup>7</sup>

According to the certification schedules set forth in Sections 54.313 and 54.314 of the Rules, in order for Nextel Partners to receive USF High Cost funding in rural and

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<sup>5</sup> See 47 C.F.R. §§ 54.313 and 54.314.

<sup>6</sup> A copy of the Kentucky PSC certification to USAC and to the Commission is attached as Exhibit B hereto. On January 14, 2005, at the request of counsel to Nextel Partners, the Kentucky PSC entered *nunc pro tunc* an order that effectively replaces the original Appendix A to the Kentucky PSC Nextel Partners ETC designation order with a corrected Appendix A. See Exhibit C.

<sup>7</sup> In its recent Report and Order addressing the minimum requirements for a telecommunications carrier to be designated as an ETC and thus eligible to receive universal service support, the FCC adopted new rules enabling ETCs to be eligible for universal service support as of their ETC designation date, provided that the required certifications and line-count data are filed within 60 days of the carrier's ETC designation date. As a result, newly designated carriers will no longer need to seek waivers of the filing deadline rules in order to receive support on a timely basis and customers of new designated ETCs will begin to receive the benefits of universal service support as of the ETC's designation date. See *Federal-State Joint Board on Universal Service*, Report and Order, CC Dkt. No. 96-45, FCC 05-46, 2005 WL 646635, ¶ 92. However, these new rules are not yet effective.

non-rural study areas commencing December 16, 2004, (which falls in the Fourth Quarter of 2004) the Kentucky PSC would have to have filed an annual certification for Nextel Partners no later than July 1, 2004.<sup>8</sup> The Kentucky PSC did not submit the requisite annual certification by July 1, 2004 because Nextel Partners was not yet designated as an ETC. As a result, waivers of Sections 54.313 and 54.314 of the Commission's Rules are needed to allow Nextel Partners to receive USF High Cost Program funding for the time period December 16, 2004 through March 31, 2005.

### **III. REQUEST FOR WAIVERS**

Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, allows the FCC to waive the application of any rules for good cause shown. In addition, Section 1.925(b)(3) provides for a waiver where it is shown that,

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by the application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>9</sup>

Federal courts hold that the Commission "may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest."<sup>10</sup>

As noted above, strict application of the annual state certification requirements set forth in Sections 54.313 and 54.314 of the Commission's Rules in this instance would create the unintended consequence with respect to Nextel Partners of delaying USF High

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<sup>8</sup> See 47 C.F.R. § 54.314(d)(4).

<sup>9</sup> See 47 C.F.R. § 1.925(b)(3).

<sup>10</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

Cost support for months after December 16, 2004, the date Nextel Partners was designated an ETC in the State of Kentucky. Unless the waivers are granted, USAC would not make timely and appropriate USF High Cost Program payments to Nextel Partners, despite the fact that Nextel Partners has been functioning as an ETC and providing supported services in Kentucky since the Fourth Quarter of 2004. A delay in Nextel Partners' funding due to the strict application of Sections 54.313 and 54.314 of the Commission's Rules would be inconsistent with the Commission's public policy goals of bringing access to mobile telecommunications technologies to all citizens. Indeed, the Commission has observed that facilitating access to spectrum-based, wireless and mobile communications technologies is "an especially important Commission goal ... not just in urban markets but also in rural areas, to enable Americans who travel, reside or conduct business throughout the country to communicate effectively for the benefit of the general public interest."<sup>11</sup>

USF funding is vital to Nextel Partners' ability to carry out its mission as an ETC because it will allow Nextel Partners to pursue the construction and upgrading of its network to better serve customers in the Designated Areas. Nextel Partners should not be unfairly handicapped, stalled or otherwise delayed in pursuing its mission as an ETC by the strict application of rules that were never intended to undermine the purpose of an ETC designation. Nextel Partners should not be denied months of USF High Cost

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<sup>11</sup> See *In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services; 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services; Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation*, Notice of Proposed Rulemaking, 18 FCC Rcd. 20802, 20807-08, ¶ 8 (2003).

Program support to which it is otherwise entitled merely because the State of Kentucky did not file the Section 54.313 and 54.314 annual certifications by the July 1, 2004 deadline, nearly six months before Nextel Partners was designated an ETC in Kentucky.

Grant of Nextel Partners' petition for waiver would clearly serve the public interest and is fully consistent with Sections 1.3 and 1.925(b)(3) of the Commission's Rules, as well as with the Commission's goal of competitive neutrality in USF support. The universal service program is intended to promote access to advanced services in areas where telephone subscribership has been historically low. Nextel Partners' universal service program furthers this goal by providing the USF supported services to citizens in the Designated Areas over an advanced digital mobile nationwide network. High Cost Program funding will enable Nextel Partners to promptly begin upgrading and constructing new facilities to provide quality services to Kentucky residents.

The limited waivers that Nextel Partners seeks are fully consistent with and supported by well-established Commission precedent. Indeed, the Commission has granted numerous similar waiver requests.<sup>12</sup> In granting such waivers, the Commission has identified an ETC designation date as being a "special circumstance" that warrants a

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<sup>12</sup> See, e.g., Public Notice, *The Telecommunications Access Policy Division of the Wireline Bureau Grants Petitions Requesting Waiver of Various Filing Deadlines Related to the Universal Service Program*, 19 FCC Rcd. 16121 (rel. Aug. 19, 2004); *N.E. Colorado Cellular, Inc., Petition for Waiver of Section 54.314(d) of the Commission's Rules*, Order, 18 FCC Rcd. 15597, 15600, ¶ 8 (2003); *Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, 18 FCC Rcd. 7138, 7141, ¶ 7 (2003); *RFB Cellular, Inc., Petition for Waiver of Section 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*, 17 FCC Rcd. 24387 (2002).

limited waiver to allow a new ETC to file retroactive certifications so that ETC support can commence.<sup>13</sup>

Further, in granting a waiver to the State of West Virginia for the late filing of its certification for non-rural ETCs, the Commission reasoned that, “the potential harm that would be suffered by customers [of the carriers] . . . justifies a waiver.”<sup>14</sup> In the *West Virginia Waiver Order*, the Commission found that the loss of a quarter of USF funding in similar circumstances would be “egregious.”<sup>15</sup>

Because grant of the requested waivers is fully consistent with the Commission’s Rules and precedent and would allow Nextel Partners to better carry out its mission as an ETC in furtherance of the public interest, and because a delay in receipt of funds by Nextel Partners could have the egregious and unintended consequence of unnecessarily delaying implementation of the important goals of USF high cost support, the Commission should act promptly to grant Nextel Partners’ requested waiver.

#### **IV. REQUEST FOR EXPEDITED ACTION**

Action on these waiver requests must be expedited in order to ensure that vital USF High Cost support to Nextel Partners can commence as soon as possible. In order to meet its current obligations as an ETC, Nextel Partners must be able to receive, on a timely basis, the support for which it is eligible upon designation as an ETC. Expedited action is critical because Nextel Partners has already been designated as an ETC in the State of Kentucky and would otherwise be required to provide, without the benefit of

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<sup>13</sup> See *id.*

<sup>14</sup> *West Virginia Public Service Commission, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, 16 FCC Rcd. 5784, 5786 (2001) (“*West Virginia Waiver Order*”).

<sup>15</sup> *Id.*

subsidies, USF supported services for which other ETCs receive funding. Grant of the requested waiver would minimize economic and competitive damage caused by the delay in receipt of USF support.

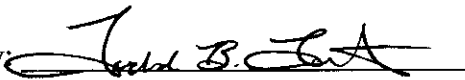
**V. CONCLUSION**

Nextel Partners requests that the Commission waive the strict application of Sections 54.313 and 54.314 of the Rules to treat the Kentucky PSC's December 16, 2004 annual certification of Nextel Partners' use of USF High Cost Program funds as timely filed for purposes of allowing Nextel Partners to begin receiving USF High Cost subsidies as of December 16, 2004.

WHEREFORE, for good cause shown, Nextel Partners respectfully submits that the requested waivers of the Commission's Rules will serve the public interest, and should be granted on an expedited basis.

Respectfully submitted,

**NEXTEL PARTNERS, INC.**

By: 

Donald J. Manning  
Vice President and General Counsel  
Todd B. Lantor  
Chief Regulatory Counsel  
Nextel Partners, Inc.  
4500 Carillon Point  
Kirkland, WA 98033  
(425) 576-3660  
(425) 576-3650 facsimile

May 17, 2005



## **EXHIBIT A**

**DESIGNATED AREAS IN KENTUCKY IN WHICH NEXTEL  
PARTNERS HAS BEEN DESIGNATED AN ETC**

Designated areas for which Nextel is granted ETC Designation

1. Rural Telephone Company Study Areas

260412      Lewisport Telephone Company  
 260413      Logan County Telephone Company  
 260414      Mountain Rural Telephone Company  
 260415      Peoples Rural Telephone Company  
 260418      South Central Rural Telephone Company

2. Non-Rural ILEC Wire Centers

265182      BellSouth – KY

BDFRKYMA	ENSRKYMA	LOUSKYES	MLBGKYMA	SDVLKYMA
BGDDKYMA	FKLNKYMA	LRBGKYMA	MLTNKYMA	SEBRKYMA
BLFDKYMA	FNVLKYMA	LSVLKY26	MTEDKYMA	SHVLKYMA
BRGNKYMA	FORDKYMA	LSVLKYAN	MTSTKYMA	SLPHKYMA
BRTWKYES	FRFTKYES	LSVLKYAP	MYVLKYMA	SLVSKYMA
BWLGKYMA	FRFTKYMA	LSVLKYBE	NRVLKYMA	SNTNKYMA
BWLGKYRV	GHNTKYMA	LSVLKYBR	NWHNKYMA	SPFDKYMA
BYVLKYMA	GRTWKYMA	LSVLKYCW	OKGVKYES	SRGHKYMA
CHPLKYMA	HABTKYMA	LSVLKYFC	OWBOKYMA	SSVLKYMA
CLPTKYMA	HANSKYMA	LSVLKYHA	OWTNKYMA	STCHKYMA
CMBGKYMA	HBVLKYMA	LSVLKYJT	PARSKYMA	STFRKYMA
COTNKYMA	HDBGKYMA	LSVLKYOA	PDCHKYMA	STGRKYMA
CRBNKYMA	HNSNKYMA	LSVLKYSH	PIVLKYMA	STRGKYMA
CRBOKYMA	HPVLKYMA	LSVLKYSL	PKVLKYMA	TYVLKYMA
CRLSKYMA	HRBGKYES	LSVLKYSM	PLRGKYMA	UTICKYMA
CRTNKYMA	HRFRKYMA	LSVLKYTS	PNTHKYMA	WACOKYMA
CYDNKYMA	HRLNKYMA	LSVLKYVS	PNVLKYMA	WDDYKYMA
CYNTKYMA	HWVLKYMA	LSVLKYWE	PRTNKYES	WHVLKYMA
DAVLKYMA	JCSNKYMA	MACEKYMA	PRVLKYMA	WLBGKYMA
DIXNKYMA	JLLCTNMA	MCDNKYMA	PTRYKYMA	WLVLYMA
EDVLKYMA	JNCYKYMA	MDBOKYMA	RBRDKYMA	WNCHKYMA
EKTNKYMA	KKVLKYMA	MDVIKYMA	RCMDKYMA	WNCHKYPV
EMNNKYES	LBJTKYMA	MGFDKYMA	RLVLKYMA	WSBGKYMA
EMNNKYPL	LGRNKYES	MGTWKYMA	RSTRKYES	WSPNKYMA

269690 Kentucky ALLTEL, Inc.

AGSTKYXA	CTBGKYXA	HZRDKYXA	LXTNKYXG	SHBGKYXA
ALBYKYXA	CYVLKYXA	IRV NKYXA	MDWYKYXA	SHDNKYXA
ASLDKYXA	EBNK KYXA	LBNN KYXA	MEDSKYXA	SLLCKYXA
BBVLKYXA	EBRNKYAC	LBRTKYXA	MNCHKYXA	SMGVKYXA
BEREKYXA	EZTWKYXA	LNCSKYXA	MNTIKYXA	SMRTKYXA
BESPKYXA	FBSHKYXA	LONDKYXA	MRHDKYXA	SOVLKYXA
BRHDKYXA	FLLCKYXA	LRTTKYXA	MTOLKYXA	SSHRKYXA
BRSDKYXA	FMBGKYXA	LTFDKYXA	MTVRKYAI	VNBGKYXA
BSVLKYXA	GLSGKYXA	LVTNKYXA	MYLCKYXA	VRSLKYXA
BTVLK YXA	GNBGKYXB	LXTNKYUK	NANCKYXA	WHLLKYXA
BWVLKYXA	GNUPKYXA	LXTNKYXA	NCVLKYXA	WLMRKYXA
CECLKYXA	GRSNKYXA	LXTNKYXB	OLHLKYXA	AGSTKYXA
CKSNKYXA	GYSNKYXA	LXTNKYXC	OWVLKYXA	
CLCTKYXA	HGVLKYXA	LXTNKYXD	PNLCKYXE	
CLMAKYXA	HLBOKYXA	LXTNKYXE	RSSLKYXB	
CMVLKYXA	HTVLKYXE	LXTNKYXF	SCHLKYXA	

## **EXHIBIT B**

**ANNUAL CERTIFICATION REGARDING NEXTEL PARTNERS  
SENT BY THE KENTUCKY PUBLIC SERVICE COMMISSION  
TO THE FCC AND USAC**

Ernie Fletcher  
Governor



Lajuana S. Wilcher  
Secretary

Commonwealth of Kentucky  
**Environmental and Public Protection Cabinet**  
**Public Service Commission**

211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940

Fax: (502) 564-3460  
December 16, 2004

Federal Communications Commission Office of the Secretary  
445 12th Street, SW  
Room TW-A306  
Washington, DC 20554

CERTIFICATE OF SERVICE

RE: Case No. 2003-00143  
NPCR, Inc. dba Nextel Partners

I, Beth O'Donnell, Executive Director of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the addressee by U.S. Mail on December 16, 2004.

A handwritten signature in black ink, appearing to read "Beth O'Donnell", written over a horizontal line.

Executive Director

BOD/sh  
Enclosure

Ernie Fletcher  
Governor



Lajuana S. Wilcher  
Secretary

Commonwealth of Kentucky  
**Environmental and Public Protection Cabinet**  
**Public Service Commission**

211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460  
December 16, 2004

Universal Service Administrative Co.  
2000 L Street, NW  
Suite 200  
Washington, DC 20036

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Enclosure



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Secretary

Commonwealth of Kentucky  
**Environmental and Public Protection Cabinet**  
**Public Service Commission**

211 Sower Blvd  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460  
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Universal Service Administrative Co.  
444 Hoes Lane  
RRC 4A1060  
Piscataway, NJ 08854

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Executive Director

BOD/sh  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF NPCR, INC. D/B/A NEXTEL	)	
PARTNERS FOR DESIGNATION AS AN	)	CASE NO.
ELIGIBLE TELECOMMUNICATIONS CARRIER	)	2003-00143
IN THE STATE OF KENTUCKY		

O R D E R

On April 23, 2003, NPCR, Inc. d/b/a Nextel Partners ("Nextel") filed an Application for Designation as an Eligible Telecommunications Carrier ("ETC") in certain rural and non-rural areas of Kentucky in which it provides service. The Commission granted intervention requests of the Independent Telephone Group<sup>1</sup> and TDS Telecom. Nextel specifically requested that it be granted ETC status in service areas of Leslie County Telephone,<sup>2</sup> Lewisport Telephone Company, Logan County Telephone Company, Mountain Rural Telephone Company, Peoples Rural Telephone Company, South Central Rural Telephone Company, certain wire centers of BellSouth Telecommunications, Inc., and Kentucky ALLTEI, Inc.

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<sup>1</sup> The Independent Telephone Group consists of Ballard Rural Telephone Cooperative Corporation, Inc.; Brandenburg Telephone Company; Coalfields Telephone Company; Duo County Telephone Cooperative Corporation, Inc.; Foothills Rural Telephone Cooperative Corporation, Inc.; Highland Telephone Cooperative, Inc.; Logan Telephone Cooperative, Inc.; Mountain Rural Telephone Cooperative Corporation, Inc.; North Central Cooperative Corporation; Peoples Rural Telephone Cooperative Corporation, Inc.; South Central Rural Telephone Cooperative Corporation, Inc.; Thacker-Grigsby Telephone Company, Incorporated; and West Kentucky Rural Telephone Cooperative Corporation, Inc.

<sup>2</sup> Nextel amended its petition to exclude Leslie County Telephone.



The Commission set up a procedural schedule in which data requests were exchanged, parties were allowed to submit comments, and parties were allowed to request a public hearing, which was requested and granted. The Commission held the public hearing on May 25, 2004, and the parties subsequently filed briefs and reply briefs. The matter is now ripe for Commission decision.

#### Discussion

Section 254(e) of the Telecommunications Act of 1996 ("the Act") provides that "only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support."<sup>3</sup> Pursuant to Section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.<sup>4</sup>

Section 214(e)(2) of the Act provides state commissions with the primary responsibility for determining ETC designations. Under Section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of Section 214(e)(1).<sup>5</sup> Before

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<sup>3</sup> 47 U.S.C. § 254(e).

<sup>4</sup> 47 U.S.C. § 214(e)(1).

<sup>5</sup> 47 U.S.C. § 214(e)(6).

designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.<sup>6</sup>

An ETC petition must contain the following: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to Section 254(c); (2) a certification that the petitioner offers or intends to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services"; (3) a description of how the petitioner "advertise[s] the availability of [supported] services and the charges therefore using media of general distribution"; and (4) identification of its study area if the petitioner meets the definition of a "rural telephone company" pursuant to Section 3(37) of the Act, or, if the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests an ETC designation from the Commission.

The intervenors<sup>7</sup> brought up a new argument in the post-hearing brief against allowing Nextel's petition to be an ETC. The intervenors argue that Nextel is not properly registered as a corporation to do business in the state of Kentucky under KRS 365.015(2)(a) and has not filed the appropriate documents with the Secretary of State for an assumed name, "Nextel Partners." Nextel asserts in its reply brief that it has filed the appropriate documents with the Secretary of State and that the name "Nextel Partners" is registered with NEXTEL WIP Lease Corp. NEXTEL WIP Lease

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<sup>6</sup> Id.

<sup>7</sup> The intervenors that actively participated in this proceeding and that are referenced throughout this memo refer to Logan Telephone Cooperative, Inc., Mountain Rural Telephone Cooperative Corporation, Inc., Peoples Rural Telephone Cooperative Corporation, Inc., South Central Rural Telephone Cooperative Corporation, Inc., and the Independent Telephone Group.

Corp. is under the same corporate ownership as NPCR, Inc. The Commission finds that the applicant is properly registered to do business in the state of Kentucky.

Offering the Services Designated for Support

Nextel has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service mechanism. As noted in its petition, Nextel is authorized to provide cellular radiotelephone service in the 800 MHz band. Nextel certifies that it now provides or will provide, throughout its designated service area, the services and functionalities enumerated in Section 54.101(a) of the Federal Communications Commission's ("FCC") rules. Nextel has also certified that, in compliance with rule section 54.405, it will make available and advertise Lifeline service to qualifying low-income consumers. Furthermore, Nextel has made commitments that closely track those set forth in the Virginia Cellular Order<sup>8</sup> and Highland Cellular Order,<sup>9</sup> including: (1) annual reporting of progress toward build-out plans, unfulfilled service requests, and complaints per 1,000 handsets; (2) specific commitments to provide service to requesting customers in the area for which it is designated, including those areas

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<sup>8</sup> Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd. 1563 (2004) (Virginia Cellular Order).

<sup>9</sup> Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd. 6422 (2004)(Highland Cellular Order).

outside existing network coverage; and (3) specific commitments to construct new cell sites in areas outside its network coverage.<sup>10</sup>

The intervenors argue that Nextel does not provide service throughout the rural area in which it seeks designation as an ETC. Signal propagation maps support, and Nextel admits, that it is unable to provide service at this time to all areas. The FCC has determined that a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC. Moreover, Nextel has committed to improve its network and reach out to areas that it does not currently serve.

The intervenors argue that Nextel fails to offer supported services, such as the Lifeline and Link-Up programs, and suggest that the participation rate in Lifeline/Link-Up will not increase even if Nextel were to offer the associated discounts. Nextel states that it will participate in the Lifeline and Link-Up programs and will otherwise comply with all Commission rules governing universal service programs. Based on a review of the record, the Commission finds that Nextel has demonstrated that it now offers, or will offer, once designated, the services suggested by the federal universal service mechanism.

#### Offering the Supported Services Using a Carrier's Own Facilities

Nextel states that it intends to provide the supported services using its existing network infrastructure. Nextel currently provides the service using its facilities-based digital network infrastructure and licensed CMRS spectrum in Kentucky. The

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<sup>10</sup> Nextel has provided detailed information on how it will use universal service support to construct cell sites throughout the area in which it is designated as an ETC.

intervenors argue that Nextel may be unable to serve throughout the service areas of the rural carriers and that the assertions of the applicant have not been supported with either cost studies or capital plans to provide service.

Section 214(e)(4) explains that a secondary ETC may be required to "ensure that all customers ... continue to be served" should a primary ETC (i.e., incumbent LEC) "cease providing universal service in an area served by more than one eligible telecommunications carrier." The implications are that ETC status has significant potential obligations if universal service to end-users ever becomes compromised.

The Commission finds that Nextel has demonstrated that it satisfies the requirement of Section 214(e)(1)(A) that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services. The Commission will monitor the progress of Nextel's build-out and ability to serve its customers through regulatory reports detailed later in this Order.

#### Advertising Supported Services

Nextel has demonstrated that it satisfies the requirement of Section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefore by using media of general distribution. The intervenors, however, contend that Nextel does not direct its advertising directly at consumers in the rural areas and only focuses on major metropolitan areas. In its petition, Nextel states that it currently advertises the availability of its services and will do so for each of the supported services on a regular basis in newspapers, magazines, television, and radio in accordance with Section 54.201(d)(2) of the FCC's rules. Nextel has provided lists of its advertising that show it does advertise throughout the state and the rural areas. The Commission finds that

Nextel has demonstrated that it will advertise the availability of suggested services and charges therefore.

#### Non-Rural Study Areas

The FCC previously has found designation of additional ETCs in areas served by non-rural telephone companies to be per se in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of Section 214(e)(1) of the Act.<sup>11</sup> The Commission believes that Nextel's public interest showing here is sufficient, based on the detailed commitments Nextel has made to ensure that it provides high-quality service throughout the proposed rural and non-rural service areas; that is, if Nextel has satisfied the more rigorous public interest analysis for the rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas.

#### Rural Study Areas

In considering whether designation of Nextel as an ETC in areas served by rural telephone companies will serve the public interest, the Commission must consider whether the benefits of an additional ETC in such study areas outweigh any potential harm. In determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, the Commission must weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, and the

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<sup>11</sup> See, e.g., Celco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd. 39 (2000).

competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.

The Commission finds that Nextel's universal service offering will provide a variety of benefits to customers. For instance, Nextel has committed to provide customers access to telecommunications and data services where they do not have access to a wireline telephone. In addition, the mobility of Nextel's wireless service will provide benefits such as access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities. Moreover, Nextel states that it offers larger local calling areas than those of the incumbent LECs it competes against, which could result in fewer toll charges for Nextel's customers. Further, Nextel has made service quality commitments comparable to those made by petitioners in the Virginia Cellular Order and Highland Cellular Order, including compliance with the Cellular Telecommunications Industry Association ("CTIA") Consumer Code for Wireless Service.<sup>12</sup>

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<sup>12</sup> CTIA, Consumer Code for Wireless Service, available at [http://www.wow-com.com/pdf/The\\_Code.pdf](http://www.wow-com.com/pdf/The_Code.pdf). Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy.

### Public Interest Analysis

In determining whether the public interest is served, the burden of proof is upon the ETC applicant.<sup>13</sup> Nextel asserts that granting ETC designation to Nextel will provide rural consumers the benefits of competition through increased choices and further the deployment of new telecommunications services. It also asserts that granting the request will not harm consumers. The Commission finds that Nextel has satisfied the burden of proof in establishing that its universal service offering in this area will provide benefits to rural consumers.

### Certification in Designated Service Areas

The Commission finds that Nextel should be certified to receive Universal Service Fund support for the current certification period as an ETC in the service areas served by non-rural telephone companies, as designated herein. The Commission also finds that Nextel should be certified to receive Universal Service Fund support for the current certification period as an ETC in the service areas served by rural telephone companies, as designated herein. Nextel's service area for each rural telephone company encompasses that company's entire study area.

### Regulatory Oversight

Separately, and in addition to its annual certification filing under rule sections 54.513 and 54.314, Nextel has committed to submit records and documentation on an annual basis detailing: (1) its progress towards meeting its build-out plans; (2) the number of complaints per 1,000 handsets; and (3) information detailing how many

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<sup>13</sup> See Highland Cellular Order, 19 FCC Rcd. at 6431, ¶ 20; Virginia Cellular Order, 19 FCC Rcd. at 1574-75, ¶ 26.



requests for service from potential customers were unfulfilled for the past year. The Commission will require Nextel to file this information and make available to the Commission any other information as it relates to service. The information shall be filed in the record of Administrative Case No. 381<sup>14</sup> by September 1 of each year.

IT IS THEREFORE ORDERED that:

1. Nextel shall be designated an ETC in the geographic areas requested and as listed in Appendix A, attached hereto and incorporated herein.
2. Nextel shall offer universal support services to consumers in its service area.
3. Nextel shall offer these services using its own facilities or a combination of its own facilities and resale of another carrier's services, including services offered by another.
4. Nextel shall advertise the availability of and charges for these services using media of general distribution.
5. Nextel is hereby certified as complying with the FCC's criteria, in accordance with 47 U.S.C. § 254(e), and therefore eligible to receive Universal Service Fund support for the current certification period.
6. By September 1, 2005, and each September 1 thereafter, Nextel shall make its annual certification filing in Administrative Case No. 381 and shall submit additional records as described herein.

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<sup>14</sup> Administrative Case No. 381, A Certification of the Carriers Receiving Federal Universal Service High-Cost Support.

7. A copy of this Order shall be served upon the Federal Communications Commission and the Universal Service Administration Company.

Done at Frankfort, Kentucky, this 16th day of December, 2004.

By the Commission

Commissioner W. Gregory Coker did not participate in the deliberations or decision concerning this case.

ATTEST:

  
Executive Director

Case No. 2003-00143

## APPENDIX A

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2003-00143 DATED December 16, 2004.

Designated areas for which Nextel is granted ETC Designation

1. Rural Telephone Company Study Areas

260412      Lewisport Telephone Company  
260413      Logan County Telephone Company  
260414      Mountain Rural Telephone Company  
260415      Peoples Rural Telephone Company  
260418      South Central Rural Telephone Company

2. Non-Rural ILEC Wire Centers

265182      BellSouth – KY

BDFRKYMA	ENSRKYMA	LOUSKYES	MLBGKYMA	SDVLKYMA
BGDDKYMA	FKLN KYMA	LRBGKYMA	MLTNKYMA	SEBRKYMA
BLFDKYMA	FNVLYMA	LSVLKY26	MTEDKYMA	SHVLKYMA
BRGNKYMA	FORDKYMA	LSVLKYAN	MTSTKYMA	SLPHKYMA
BRTWKYES	FRFTKYES	LSVLKYAP	MYVLKYMA	SLVSKYMA
BWLGKYMA	FRFTKYMA	UVLKYBE	NRVLKYMA	SNTNKYMA
BWLGKYRV	GHNTKYMA	LSVLKYBR	NWHNKYMA	SPFDKYMA
BYVLKYMA	GRTWKYMA	LSVLKYCW	OKGVKYES	SRGHKYMA
CHPLKYMA	HABTKYMA	LSVLKYFC	OWBOKYMA	SSVLKYMA
CLPTKYMA	HANSKYMA	LSVLKYHA	OWTNKYMA	STCHKYMA
CMBGKYMA	HBVLKYMA	LSVLKYJT	PARSKYMA	STFRKYMA
COTNKYMA	HDBGKYMA	LSVLKYOA	PDCHKYMA	STGRKYMA
CRBNKYMA	HNSNKYMA	LSVLKYSH	PIVLKYMA	STRGKYMA
CRBOKYMA	HPVLKYMA	LSVLKYSL	PKVLKYMA	TYVLKYMA
CRLSKYMA	HRBGKYES	LSVLKYSM	PLRGKYMA	UTICKYMA
CRTNKYMA	HRFRKYMA	LSVLKYTS	PNTHKYMA	WACOKYMA
CYDNKYMA	HRLNKYMA	LSVLKYVS	PNVLKYMA	WDDYKYMA
CYNTKYMA	HWVLKYMA	LSVLKYWE	PRTNKYES	WHVLKYMA
DAVLKYMA	JCSNKYMA	MACEKYMA	PRVLKYMA	WLBGKYMA
DIXNKYMA	JLLCTNMA	MCDNKYMA	PTRYKYMA	WLVLYKYMA
EDVLKYMA	JNCYKYMA	MDBOKYMA	RBRDKYMA	WNCHKYMA
EKTNKYMA	KKVLKYMA	MDVIKYMA	RCMDKYMA	WNCHKYPV
EMNNKYES	LBJTKYMA	MGFDKYMA	RLVLKYMA	WSBGKYMA
EMNNKYPL	LGRNKYES	MGTWKYMA	RSTRKYES	WSPNKYMA

269690 Kentucky ALLTEL, Inc.

AGSTKYXA	CTBGKYXA	HZRDKYXA	LXTNKYXG	SHBGKYXA
ALBYKYXA	CYVLKYXA	IRVNKYXA	MDWYKYXA	SHDNKYXA
ASLDKYXA	EBNKKYXA	LBNNKYXA	MEDSKYXA	SLLCKYXA
BBVLKYXA	EBRNKYAC	LBRTKYXA	MNCHKYXA	SMGVKYXA
BEREKYXA	EZTWKYXA	LNCSKYXA	MNTIKYXA	SMRTKYXA
BESPKYXA	FBSHKYXA	LONDKYXA	MRHDKYXA	SOVLKYXA
BRHDKYXA	FLLCKYXA	LRTTKYXA	MTOLKYXA	SSHRKYXA
BRSDKYXA	FMBGKYXA	LTFDKYXA	MTVRKYAI	VNRGKYXA
BSVLKYXA	GISGKYXA	LVTNKYXA	MYLCKYXA	VRSLKYXA
BTVLKYXA	GNBGKYXB	LXTNKYUK	NANCKYXA	WHLLKYXA
BWVLKYXA	GNUPKYXA	LXTNKYXA	NCVLKYXA	WLMRKYXA
CECLKYXA	GRSNKYXA	LXTNKYXB	OLHLKYXA	AGSTKYXA
CKSNKYXA	GYSNKYXA	LXTNKYXC	OWVLKYXA	
CLCTKYXA	HGVLKYXA	LXTNKYXD	PNLCKYXE	
CLMAKYXA	HLBOKYXA	LXTNKYXE	RSSLKYXB	
CMVLKYXA	HTVLKYXE	LXTNKYXF	SCHLKYXA	

## **EXHIBIT C**

**JANUARY 14, 2005 ORDER BY THE KENTUCKY PUBLIC  
SERVICE COMMISSION CORRECTING THREE  
TYPOGRAPHICAL ERRORS CONTAINED IN APPENDIX A TO  
THE ORDER GRANTING NEXTEL PARTNERS APPLICATION  
FOR DESIGNATION AS AN ETC**

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF NPCR, INC. D/B/A NEXTEL	)	
PARTNERS FOR DESIGNATION AS AN	)	CASE NO.
ELIGIBLE TELECOMMUNICATIONS CARRIER	)	2003-00143
IN THE STATE OF KENTUCKY	)	

O R D E R

On December 16, 2004, the Commission granted the request sought by NPCR, Inc. d/b/a Nextel Partners ("Nextel") to become an eligible telecommunications carrier. By letter received December 28, 2004, Nextel advised the Commission that the appendix to the December 16 Order, listing the designated areas for which Nextel is granted eligible telecommunications carrier status, contained three typographical errors. Appendix A should be reissued.

The Commission HEREBY ORDERS, to be entered nunc pro tunc, that Appendix A, attached hereto and incorporated herein, be substituted for the December 16, 2004 appendix.

Done at Frankfort, Kentucky, this 14th day of January, 2005.

By the Commission

ATTEST:



Executive Director

## APPENDIX A

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2003-00143 DATED January 14, 2005.

#### Designated areas for which Nextel is granted ETC Designation

##### 1. Rural Telephone Company Study Areas

260412      Lewisport Telephone Company  
260413      Logan County Telephone Company  
260414      Mountain Rural Telephone Company  
260415      Peoples Rural Telephone Company  
260418      South Central Rural Telephone Company

##### 2. Non-Rural ILEC Wire Centers

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ASLDKYXA	EBNKKYXA	LBNNKYXA	MEDSKYXA	SLLCKYXA
BBVLKYXA	EBRNKYAC	LBRTKYXA	MNCHKYXA	SMGVKYXA
BEREKYXA	EZTWKYXA	LNC SKYXA	MNTIKYXA	SMRTKYXA
BESPKYXA	FBSHKYXA	LONDKYXA	MRHDKYXA	SOVLKYXA
BRHDKYXA	FLLCKYXA	LRTTKYXA	MTOLKYXA	SSHRKYXA
BRSDKYXA	FMBGKYXA	LTFDKYXA	MTVRKYAI	VNBGKYXA
BSVLKYXA	GLSGKYXA	LVTNKYXA	MYLCKYXA	VRSLKYXA
BTVLKYXA	GNBGKYXB	LXTNKYUK	NANCKYXA	WHLLKYXA
BWVLKYXA	GNUPKYXA	LXTNKYXA	NCVLKYXA	WLMRKYXA
CECLKYXA	GRSNKYXA	LXTNKYXB	OLHLKYXA	AGSTKYXA
CKSNKYXA	GYSNKYXA	LXTNKYXC	OWVLKYXA	
CLCTKYXA	HGVLKYXA	LXTNKYXD	PNLCKYXE	
CLMAKYXA	HLBOKYXA	LXTNKYXE	RSSLKYXB	
CMVLKYXA	HTVLKYXE	LXTNKYXF	SCHLKYXA	



Honorable Elizabeth Schofield Brown  
Attorney at Law  
Nextel Partners, Inc.  
13405 Eastpoint Centre Drive  
Suite 100  
Anchorage, KY 40223

Ms. Joan A. Coleman  
Vice President/Regulatory/External  
BellSouth Telecommunications, Inc.  
601 West Chestnut Street  
Room 410  
Louisville, KY 40203

Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Room TW-A306  
Washington, DC 20554

W. Allen Gillum  
Mountain Rural Telephone Coop. Corp.  
dba Mountain Telephone Long Distance  
405 Main Street  
P. O. Box 399  
West Liberty, KY 41472-0399

Jeff Handley  
Manager-Revenue & Earnings  
Salem Telephone Company  
c/o TDS-Telecom Southeast Division  
9737 Cogdill Road  
Suite 230  
Knoxville, TN 37932-3374

Honorable Lindsey W. Ingram, Jr.  
Attorney at Law  
Stoil, Keesion & Park, LLP  
300 West Vine Street  
Suite 2100  
Lexington, KY 40507-1801

Honorable Ronald J. Jarvis  
Attorney at Law  
Catalano & Plache, PLLC  
3221 M Street, N.W.  
Washington, DC 20007

Honorable James Dean Liebman  
Attorney at Law  
Liebman & Liebman  
403 West Main Street  
P. O. Box 478  
Frankfort, KY 40602

Donald J. Manning  
Vice President & General Counsel  
Nextel WIP Lease Corp.  
4500 Carillon Point  
Kirkland, WA 98033

Honorable Keith Moorman  
Attorney at Law  
Frost, Brown, Todd, LLC  
250 West Main Street  
Suite 2700  
Lexington, KY 40507

Mr. Steve R. Mowery  
Vice President-External Affairs  
Kentucky ALLTEL, Inc.  
P. O. Box 1650  
Lexington, KY 40588-1650

Honorable James Park, Jr.  
Frost, Brown, Todd, LLC  
250 West Main Street  
Suite 2700  
Lexington, KY 40507

Attorney at Law Philip R. Schenkenberg  
Honorable  
Briggs and Morgan, P.A.  
2200 First National Bank Building  
332 Minnesota Street  
St. Paul, MN 55101

Universal Service Administrative Co.  
2000 L Street, NW  
Suite 200  
Washington, DC 20036

Universal Service Administrative Co.  
444 Hoes Lane  
RRC 4A1060  
Piscataway, NJ 08854